

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 9/14/2005 Item: 4.b.

File Number  
CPA03-067-01

Application Type  
Conditional Use Permit

Council District SNI  
3 University

Planning Area  
Central

Assessor's Parcel Number(s)  
472-28-078

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: West side of South 9th Street approximately 250 feet northwesterly of East Reed Street (561 S. 9<sup>th</sup> Street)

Gross Acreage: 0.14 Net Acreage: 0.14 Net Density: n/a

Existing Zoning: R-M Multiple Residence Existing Use: Residential Care Facility for up to 10 residents and 1 staff

Proposed Zoning: No change Proposed Use: Residential Care Facility for 18 residents and up to 3 staff

### GENERAL PLAN

Completed by: FLB

Land Use/Transportation Diagram Designation  
High Density Residential (25 – 50 du/ac)

Project Conformance:  
☒ Yes ☐ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: FLB

North: Two-family Residence RM – Multiple Family Residential

East: Single-family Residence RM – Multiple Family Residential

South: Two-family Residence RM – Multiple Family Residential

West: Single-family Residence RM – Multiple Family Residential

### ENVIRONMENTAL STATUS

Completed by: FLB

☐ Environmental Impact Report found complete  
☐ Negative Declaration  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: FLB

Annexation Title: Original City

Date: March 27, 1850

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval  
☒ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### APPLICANT

Marc A. Sabin  
Project Ninety, Inc.  
720 S. "B" St.  
San Mateo, CA 94401

### OWNER

Marc A. Sabin  
Project Ninety, Inc.  
720 S. "B" St  
San Mateo, CA 94401

### ARCHITECT

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PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: F. Lee Butler

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Department of Public Works – Attached

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Other Departments and Agencies

None

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GENERAL CORRESPONDENCE

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None

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ANALYSIS AND RECOMMENDATIONS

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## BACKGROUND

On May 9, 2005, the applicant, Marc Sabin with Project Ninety, applied for a Conditional Use Permit Amendment requesting to increase the number of residents in an existing residential care facility to 18 and to increase the number of staff to three. The existing Conditional Use Permit, approved by the Planning Commission on April 16, 2004, authorized use of the structure for up to 10 residents and one staff member. The subject site is located at 561 S. 9<sup>th</sup> Street, on the east side of South 9th Street approximately 200 feet northwesterly of East Reed Street.

A residential care facility for six or fewer residents is a permitted use in the R-M Multiple Residence District. To house more than six individuals, a Conditional Use Permit is required in the RM Zoning District per the Zoning Ordinance. No exterior changes are proposed to the existing residence, however, the current application proposes to demolish the existing detached garage to provide additional parking on-site. Some structural and/or fire code upgrades may be required at the Building Permit stage as a result of any increase in occupancy.

The existing two-story Greek Revival building was originally constructed circa 1870 as a single-family residence. The residence is listed in the City of San José Historic Resources Inventory as a Contributing Structure. Because no interior or exterior modifications are proposed to the residence, the historic status of the structure does not affect the review of the proposal. The detached garage was constructed in 2000 and is not historic. Prior to being occupied as a residential care facility, the structure was used as a single-family residence.

The subject site is generally flat and rectangular in shape and is surrounded by residential uses including two-family residences to the north and south and single-family residences to the east and west.

## Project Description

The existing two-story Greek Revival residence currently operates as a residential care facility that houses up to 10 individuals and one staff member. The subject project proposes to increase the number of residents from 10 individuals to 18 individuals. Currently, one staff member works with the residents at any given time, and the applicant is proposing to have up to three staff members present at any given

time. The residential care facility would operate a drug and alcohol recovery program that provides a clean and sober living environment for men.

As part of the project, the applicant is proposing to demolish the existing detached garage at the rear of the property to allow additional parking spaces, landscaping, and common open space at the rear of the property. The applicant is proposing a total of seven spaces at the rear. The “Analysis” section below evaluates the proposed configuration.

## **ENVIRONMENTAL REVIEW**

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15303, New Construction or Conversion of Small Structures. Under this section, projects qualifying for exemption include those that involve construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. In this instance, the project qualifies under this exemption in that it proposes an increase in the number of residents at an existing residential care facility where no modifications are proposed to the exterior of the existing residence.

## **GENERAL PLAN CONFORMANCE**

The subject site is designated High Density Residential (25 – 50 du/ac) on the San José 2020 General Plan Land Use/Transportation Diagram. High Density Residential (25 – 50 du/ac) allows multi-family residential development at a density of 25 – 50 dwelling units per acre. In the “Residential” section of the General Plan’s Land Use/Transportation Diagram chapter, the General Plan text states that “residential care and service facilities provide common sanitation facilities, but not necessarily dining/kitchen facilities, for persons occupying individual rooms either singly or in small groups. These residential uses are appropriate on lands designated Medium High Density Residential (12 – 25 du/ac) or on land designated for higher residential densities.” The proposed project conforms with the General Plan based on this statement.

Using the “Population-Dwelling Unit Equivalency” Discretionary Alternate Use Policy, the number of residents in the project should be divided by the average household size for San Jose, 3.2 persons per household. With 18 residents, the dwelling unit equivalent is 5.8 units. At the subject 0.14 gross acre property, 5.8 units equates to 41.7 du/ac. With 14 residents, the dwelling unit equivalent is 4.4 units. At the subject 0.14 gross acre property, 4.4 units equates to 31.3 du/ac. Therefore, both the use and the proposed density conform with the San José 2020 General Plan Land Use/Transportation Diagram designation of High Density Residential (25 – 50 du/ac) using the General Plan’s “Population-Dwelling Unit Equivalency” Policy.

## **ANALYSIS**

The primary issues analyzed for the proposed project are conformance with the Zoning Ordinance and Building Code requirements.

## **Zoning Code Conformance**

Per Table 20-50 of the Zoning Ordinance, in the RM Multiple Residence Zoning District a residential care facility for seven or more persons requires approval of a Conditional Use Permit.

The original Conditional Use Permit, file no. CP03-067, requested 18 residents and 3 staff. Given the amount of parking on-site, staff did not support the original proposal. Staff's original recommendation of 10 residents and one staff or six residents and two staff was approved by the Planning Commission, and staff's argument was based upon the available parking at the site at the time. As explained below, staff's current recommendation on the subject Conditional Use Permit Amendment is also based on the available parking count.

Table 20-190 of the Zoning Ordinance lists the parking requirement for a residential care facility. The Zoning Code requires one parking space per the first six client beds, plus one additional space for up to four client beds (or portion thereof) above the first six, plus one additional space for each additional four client beds (or portion thereof), plus one space for each employee or staff member. The proposed project, with 18 residents and three staff, requires a total of seven parking spaces. The project proposes seven parking spaces, however, the discussion below details why only six spaces can be accommodated on-site.

Without considering a reduction to residential care facilities parking per Section 20.90.220 (C) of the Zoning Ordinance, a total of seven parking spaces would be required on-site based on 18 residents and three staff members. The plans show a total of seven spaces on-site, however, each of the most northerly and southerly parking spaces encroach into the side setback areas. Per Section 20.90.120(A) of the Zoning Ordinance, no parking is permitted in the side setback area. By removing one of the spaces at the rear, westerly property line, the applicant could shift the remaining spaces accordingly and accommodate six parking spaces on site without encroaching into the side setback area. With six parking spaces, adherence to Table 20-190 of the Zoning Ordinance would limit the residential care facility to a maximum of 18 residents and two staff members. Or, alternatively, the facility could also operate with up to 14 residents and three staff members.

The Zoning Code states in Section 20.90.220 (C) that "a reduction in the required off-street parking for... residential care/service facilities... may be approved with a Development permit provided that such approval is based upon the findings in Subsection B of Section 20.90.200." The applicant wishes to utilize this potential reduction in the required parking in order to accommodate the proposed number of individuals, indicating that none of the residents are allowed to have vehicles. Historically, the South University Neighborhood has been concerned with on-street parking shortages in their neighborhood, therefore, staff is not supportive for an additional reduction. Copies of Sections 20.90.200(B) and 20.90.220(C) are attached.

## **Building Code Conformance**

The Building Code contains minimum square footage requirements per person for residential bedrooms. Staff has confirmed that the number of individuals proposed in each of the rooms would be in conformance with the minimum square footage requirements for the respective occupants.

The architect has indicated that the increase in the number of residents may require structural and/or fire code upgrades to the existing residence. No such upgrades are proposed as part of this application.

Because the structure is listed on the Historic Resources Inventory, no exterior modifications could occur without Planning Permit approval. Interior improvements, however, could be approved and completed through the Building Permit process.

## **PUBLIC OUTREACH**

On June 14, 2005, notification of the current application was sent to various members of the University Neighborhoods Coalition (UNC) neighborhood group. The members who replied indicated that they still oppose any intensification of the existing use and stated that they did not need the applicant to present to their organization. Selected correspondence is attached. The applicant presented their original CUP proposal to the UNC at their February 10<sup>th</sup>, 2004 general meeting. At that meeting, the UNC voted unanimously to oppose the Conditional Use Permit for the expanded residential care facility.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the proposal with members of the public. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the Planning Commission agenda, on the Planning Divisions' website.

## **CONCLUSION**

The proposed expansion of the existing residential care facility would need to utilize the parking reduction exception in 20.90.220 (C) of the San Jose Municipal Code. Staff feels that it would be more appropriate for the facility to reduce the proposed numbers of staff and residents. By limiting the number of residents to 18 and staff to two, or by limiting the number of residents to 14 and staff to three, the project would meet the parking requirements called for in the Zoning Ordinance sans any exception. Because the residents indicated with the original CUP process that parking in the neighborhood is a key concern, it is not clear that the reduced parking spaces would meet the requirements of Section 20.90.200 (B) of the Zoning Ordinance. With six on-site spaces that meet the size and setback criteria specified in the Zoning Ordinance, the facility could accommodate 18 residents and two staff members or 14 residents and three staff members.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the proposed Conditional Use Permit with the following conditions:

1. Plans shall be modified to remove parking from the side setback areas. Six parking spaces should be accommodated while still meeting the criteria found in Title 20.
2. A maximum of 18 residents and two staff members shall be permitted at any given time.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of High Density Residential (25 – 50 du/ac) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.

2. The project site is located in the R-M Multiple Residence Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The subject site is generally flat and rectangular in shape. Surrounding land uses include two-family residences to the north and south and single-family residences to the east and west.
5. The existing two-story Greek Revival building was originally constructed circa 1870 as a single-family residence. The residence is listed in the City of San José Historic Resources Inventory as a Contributing Structure. Because no interior or exterior modifications are proposed to the residence, the historic status of the structure does not affect the review of the proposal.
6. On May 9, 2005, the applicant, Marc Sabin with Project Ninety, applied for a Conditional Use Permit requesting to increase the number of residents in an existing residential care facility to 18 and to increase the number of staff to three. The previous Conditional Use Permit, approved by the Planning Commission on April 16, 2004, authorized use of the structure for 10 residents and one staff member. The subject site is located at 561 S. 9<sup>th</sup> Street, on the east side of South 9th Street approximately 200 feet northwesterly of East Reed Street. A residential care facility for six or fewer residents is a permitted use in the R-M Multiple Residence District. However, to house more than six individuals, a Conditional Use Permit is required in said zoning district per Table 20-50 of the San Jose Municipal Code.
7. No interior or exterior changes are proposed to the existing residence.
8. The existing detached garage is proposed for demolition, and surface parking as well as a small amount of common open space and landscaping would replace the detached garage.
9. Prior to being occupied as a residential care facility, the structure was used as a single-family residence.
10. Surface parking for the residential care facility is proposed at the rear of the subject site. Six parking spaces can be accommodated on-site while maintaining conformance with the Zoning Ordinance.
11. Based on parking requirements in Table 20-190, six parking spaces would satisfy the required parking for 18 residents and two staff members or 14 residents and three staff members.
12. Based on the most current records available to the Planning Divisions, no licensed residential care facilities of any type are located within 300 feet of the proposed facility.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The San José 2020 General Plan Land Use/Transportation Diagram designation of High Density Residential (25 - 50 du/ac) generally supports multi-family residential development. The General Plan

states that “residential care and service facilities provide common sanitation facilities, but not necessarily dining/kitchen facilities, for persons occupying individual rooms either singly or in small groups. These residential uses are appropriate on lands designated Medium High Density Residential (12 – 25 du/ac) or on land designated for higher residential densities.” With 18 residents, the use conforms to the General Plan Land Use/Transportation Diagram designation of High Density Residential (25 – 50 du/ac) in that the General Plan text states that “since parcels of two acres and less may be too small to be separately identified on a map of the scale of the official Land Use/Transportation Diagram, any developed parcel of two acres or less is deemed to be in conformance with the General Plan, regardless of how it is designated.”

2. The proposed project as amended and conditioned by staff complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act. The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15303, New Construction or Conversion of Small Structures. Under this section, projects qualifying for exemption include those that involve construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. In this instance, the project qualifies under this exemption in that it proposes an increase in the number of residents at an existing residential care facility where no modifications are proposed to the exterior of the structure and where the single residence is permitted on the subject site.
4. The proposed project is consistent with the State separation requirements applicable to new residential care facilities.
5. This Amendment does not negate any of the findings required by Chapter 20.100 of the San Jose Municipal Code.
6. Nothing within this CUP Amendment precludes the Planning Commission or City Council from modifying, adding, or deleting any condition in order to protect the public peace, health, safety, morals, or welfare.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or

- c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above (residential care facility for 18 residents and two staff members) and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. **Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance** for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
2. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.



3. **Revised Plans.** Within 60 days of approval of this Conditional Use Permit, the applicant shall submit revised plans detailing the configuration of six parking spaces at the rear of the property in conformance with Title 20 of the San Jose Municipal Code to the satisfaction of the Director of Planning, Building, and Code Enforcement. If no revised plans are submitted within 60 days of approval, the approval shall become null and void.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
3. **Conformance with Plans.** The proposed construction, development, and facility shall conform to approved development plans entitled, "Residential Care Facility for: Project Ninety, Inc." on file with the Department of Planning, Building, and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24). The final revision date will be dependent upon when the revisions are completed in accordance with condition precedent #3.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Construction.** No interior or exterior construction is approved with this permit.
6. **Refuse/Trash Enclosure.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping. The applicant shall be responsible for removing any litter at the subject site. Unless otherwise authorized, the site shall be served by residential roll-away garbage

and recycling cans. No dumpster is to be used at the subject property unless the applicant receives approval of a Permit Adjustment for a trash enclosure, subject to the discretion of the Director of Planning, Building, & Code Enforcement.

7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Protection of Storm Drains.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
10. **Fire Department Comments.** The applicant is to comply with all Fire Department comments at the plan review stage.
11. **Building Comments.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This Permit File Number, CPA03-067-01, shall be printed on all construction plans submitted to the Building Division.
  - b. *Conformance Review.* A construction plan conformance review is required.
12. **Public Works Comments.** The project shall comply with all Public Works conditions from the original CUP approval, file no. CP03-067.
13. **Operations Plan.** Facility operations are to conform to the operations plan that was part of the original CUP approval, file no. CP03-067.
14. **Number of Residents/Staff.** The residential care facility shall be limited to a maximum of eighteen (18) residents and two (2) staff members on site at any given time. Alternatively, the facility can maintain fourteen (14) residents and three (3) staff members on site at any given time.
15. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
16. **Trees.** No trees are authorized for removal with this permit. No tree larger than 56 inches in

circumference, at a height of 24 inches above the natural grade, shall be removed without a Tree Removal Permit issued by the Director of Planning.

17. **Parking.** On-site parking is to be used only for the subject residential care facility use and is to remain open and accessible at all times. No on-street parking permits are to be obtained for the subject facility to use.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit Amendment shall automatically expire two years from and after the date of approval by the Planning Commission, or City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit Amendment. The Director of Planning or Planning Commission may approve a Permit Adjustment or CUP Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.